

Revenue Ruling 68-172

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Section 6511 – Limitations on Credit or Refund

An overpayment of income tax made by a restricted Indian may be refunded to him without reference to the statute of limitations where the overpayment is attributable to the erroneous inclusion of tax-exempt income in an income tax return which was signed and filed by an Indian superintendent or other officer of the United States on behalf of the restricted Indian.

Advice has been requested whether a refund of an overpayment of tax may be made after the expiration of the statutory period of limitations specified by section 6511(a) of the Internal Revenue Code of 1954 where the income tax return was signed and filed by an Indian superintendent on behalf of a restricted Indian and the claim is for taxes paid by the Indian on tax-exempt income directly derived from allotted and restricted Indian lands.

A claim for refund of income tax was filed by an Indian superintendent on behalf of a noncompetent Indian after the statutory period of limitations had expired under section 6511(a) of the Code. The income tax return for the year in which the overpayment of tax is claimed was also signed and filed by the Indian superintendent on behalf of the Indian. The overpayment resulted from the erroneous reporting of income directly derived from restricted lands as taxable income. The Indian paid the tax on such income from his unrestricted funds. He has never been issued a certificate of competency and his restricted property is subject to the supervision of the Indian superintendent.

Section 6511(a) of the Code provides that a claim for credit or refund of an overpayment of any tax in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within two years from the time the tax was paid.

Revenue Ruling 61-11, C.B. 1961-1, 724, holds that the statute of limitations regarding claims for refund does not apply to cases where the tax was paid by an Indian superintendent or other officer of the United States on behalf of a restricted Indian on tax-exempt income directly derived from allotted and restricted Indian lands.

In *Dodge ex rel. Coshehe v. United States*, 362 F.2d 810 (1966), the court held that a claim for refund of taxes paid on an Indian's tax-exempt income was not barred by the statute of limitations. In that case the Indian superintendent filed the income tax return but did not pay the tax. The court reasoned that an Indian, still dependent upon the protection of the Federal Government, should not be bound by the mistake of a Government officer who filed his return.

Where a return is signed and filed by an Indian superintendent or other officer of the United States on behalf of a restricted Indian and the return erroneously reports as taxable income the tax-exempt income directly derived from allotted and restricted Indian lands, a claim for refund is allowable without reference to the statute of limitations 564 under section 6511(a) of the Code, regardless of whether the Government officer or the Indian himself made the overpayment of tax giving rise to the refund. However, if an Indian files his own return and pays his own tax, the rationale of the *Dodge* case does not apply.

Accordingly, the claim for refund in the instant case is allowable.